



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No. 10520-23
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 5 February 2024. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

During your enlistment processing you were granted enlistment waivers for admitted cocaine use and two other offenses. You enlisted in the Navy and began a period of active service on 11 July 2000. On 25 June 2004, you reenlisted for an additional period of active service. On 29 July 2004, you were arrested by the █ Police Department, █, █, and held on charges of conspiracy to commit murder, murder, violation of the Street Terrorism Enforcement Act, attempted murder, and violation of the █ control of deadly weapons statute. You were subsequently notified of your pending administrative separation processing by reason of commission of a serious offense (COSO) as a result of the aforementioned charges, at which time you waived your right to consult with counsel and to have your case heard before an

administrative discharge board. The separation authority directed you be discharged with an Other Than Honorable (OTH) characterization of service by reason of COSO and, on 28 March 2005, you were so discharged.

On 5 August 2015, your request for a discharge upgrade via the Naval Discharge Review Board was denied.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your characterization of service and to have your debt “waived off.” You contend: (1) you were a good Sailor with many accomplishments and a desire to become a medical naval officer, (2) you faced a charge for an offense that happened prior to your enlistment, (3) you were arrested and convicted by civilian authorities and discharged from the Navy, (4) after serving a 15-year sentence in state prison, you were paroled and eventually petitioned the court for a reduced sentence, (5) your sentence was vacated and your murder conviction was redesignated as a misdemeanor [redacted] – Assault With A Deadly Weapon], (6) your new sentence was 364 days in the country jail for which you received credit/time served, (7) you are innocent, (8) were your sentence reduced 19 to 24 years ago, it would not have ruined your naval career, (9) you did not deserve a 15 years to life sentence, and (10) “it was an injustice to say the least.” For purposes of clemency and equity consideration, the Board noted you provided a personal statement, sentencing transcripts, a character letter, a letter from the District Attorney who prosecuted your case, OMPF (official military personnel file) documents, course completion certificates and tax documents.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board considered the likely discrediting effect your civilian conviction had on the Navy. The Board was not persuaded by the State of [redacted]’s decision to change your record and noted that you were involved in misconduct that resulted in the death of another person. As a result, the Board concluded your conduct constituted a significant departure of that expected of a service member and continues to warrant an OTH characterization of service. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-release accomplishments, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigating evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in

mind that a presumption of regularity is attached to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely, _____

2/15/2024

